IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 3505 of 2005

Between:

Maruthi Poultry Farm, a proprietory concern, rep by its sole proprietor Akula Nageswararao,
Kurukuru (V) Devarapalli (M), West Godavari District.

..... PETITIONER

AND

1 Divisional Engineer (Assessment), Eastern Power Distribution Company of A.P.Ltd., Rajamundry.
2 Assistant Divisional Engineer (Operation), Eastern Power Distribution Company of A.P.Ltd Gopala Puram W.G.Dist.
3 Assistant Accounts Officer (ERO), Eastern Power Distribution Company of A.P.Ltd Nidadavole,W.G.District.
4 Station House Officer, APTS Police Station, APEPDCL, Eluru, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the provisional assessment notice ADE/O/GPM/SBE/F, DOC/D No.737, dt.21.12.2004, issued by the 2nd respondent is illegal, irregular, arbitrary and violative of principles of natural justice and violative of Article 14 and 21 of Constitution of India and also the provisions of Electricity Act 2003 and consequently direct the respondents to restore power supply for the service connection No.415, category III at Kurukuru distribution.

Counsel for the Petitioner: MR.SATYANARAYANA NIMMAGADDA

Counsel for the Respondents: Mr.Subba Rao, SC for APSEB

The Court made the following :

THE HONOURABLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.3505 OF 2005

ORDER:

The petitioner is a poultry farm situated at Kurukuru village, Devarapalli mandal of West Godavari district. It is extended power supply in service No.415 in category-III. The respondents issued an order of provisional assessment dated 21.12.2004 stating that during the course of inspection on 3.12.2004, certain irregularities were noticed. A presumption was drawn to the effect that energy valued at Rs.3,97,035/- was pilfered. The petitioner was required to pay the said amount, in case it wants continuance power supply. On account of non-payment of the amount, the power supply was disconnected. The petitioner challenges the action of the respondents.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

The petitioner was issued an order of provisional assessment dated 21.12.2004. It is issued, obviously in exercise of powers under Section 126 of the Electricity Act, 2003. A perusal of the said provision discloses that an order of provisional assessment cannot constitute the basis for demanding the amount, straight away or to effect disconnection of power supply for non-payment of the amount. The liability

of a consumer would arise only after an order of final assessment is passed. A Division Bench of this Court had taken a similar view, on interpretation of relevant provision. The petitioner is not issued any order of final assessment.

Therefore, the writ petition is allowed and the respondents are directed to restore the power supply to the petitioner forthwith, without insisting for payment of any amount indicated in the order of provisional assessment. The liability of the petitioner, in that regard, would arise, only after an order of final assessment is passed. The petitioner, however, shall be liable to pay the regular consumption charges.

25.02.2005.

Note:

Issue c.c.in three days.

B/o.

mdaa.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Friday, the 25th day of February, two thousand and five.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 Divisional Engineer (Assessment), Eastern Power Distribution Company of A.P.Ltd., Rajamundry.
2 Assistant Divisional Engineer (Operation), Eastern Power Distribution Company of A.P.Ltd Gopala Puram W.G.Dist.

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